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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

13 CR 43 (LAP)

6 WILLIAM COSME,

7 Defendant.
-----x

8 New York, N.Y.
9 July 15, 2016
10 2:00 p.m.

11 Before:

12 HON. LORETTA A. PRESKA,

13 District Judge

14 APPEARANCES

15 JOOH H. KIM
16 Acting United States Attorney for the
Southern District of New York
17 NOAH SOLOWIEJCZYK
MARTIN BELL
Assistant United States Attorneys

18 MARK DeMARCO, ESQ.
19 Attorney for Defendant

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1 (In open court; case called)

2 THE COURT: Is the government ready?

3 MR. SOLOWIEJCZYK: Good afternoon, your Honor. Noah
4 Solowiejczyk and Martin Bell on behalf of the government. We
5 are joined at counsel table by paralegal specialist Samuel
6 Lachow and Bebe Iacoha.

7 THE COURT: Good afternoon.

8 Is the defense ready?

9 MR. DeMARCO: Yes. Mark DeMarco for Mr. Cosme.

10 THE COURT: Good afternoon.

11 Mr. Cosme, I know that in the past you have indicated
12 your desire to represent yourself. Is that what you want to do
13 today, or do you want to have Mr. DeMarco represent you today,
14 sir?

15 THE DEFENDANT: Your Honor, I have sent several
16 communications to the Court and Mr. DeMarco in regards to my
17 intention of the firm named K&L Gates, who will be representing
18 me at the District Court level as well as the appellate court
19 level. I do have those documents here with me today for your
20 viewing.

21 THE COURT: Mr. Cosme, as you know in the past, I have
22 told you that any time retained counsel puts in a notice of
23 appearance, retained counsel may appear. I do not have a
24 notice of appearance by K&L Gates.

25 So my question to you, sir, is: During this

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1 proceeding, do you want Mr. DeMarco to speak on your behalf or
2 do you want to speak on your own behalf?

3 THE DEFENDANT: Neither, your Honor. I prefer my
4 retained counsel to be speaking with me on my behalf and if
5 possible maybe potentially adjourn this after until the 27th
6 when counsel is actually back in town. They are out of town
7 and I have all the supporting documentation to support that.

8 THE COURT: Mr. Cosme, as I said I have mentioned to
9 you on numerous occasions that if retained counsel puts in a
10 notice of appearance, retained counsel may appear. I have no
11 indication from retained counsel that counsel wishes to appear.
12 Accordingly, we're going to go forward today.

13 THE DEFENDANT: Your Honor, I do object --

14 THE COURT: That said, I will ask you one more time:
15 Do you wish to represent yourself today at these proceedings,
16 or do you want Mr. DeMarco to represent you?

17 THE DEFENDANT: Your Honor, I would like to give you a
18 little bit more background before I answer that question in
19 regards to the retained issue.

20 THE COURT: We're finished with the retained issue,
21 sir. I have no indication that retained counsel wishes to
22 appear.

23 THE DEFENDANT: Your Honor --

24 THE COURT: Answer my question. Do you want to
25 represent yourself, or do you want Mr. DeMarco --

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1 THE DEFENDANT: Your Honor, I have evidence that the
2 retained counsel is willing to appear. I have 13 pages of
3 their retainer agreement with me.

4 THE COURT: Again, Mr. Cosme, there is no notice of
5 appearance by retained counsel and there is no indication from
6 counsel that counsel wishes to appear.

7 If you do not answer me that you wish to represent
8 yourself, I will have Mr. DeMarco represent you.

9 Last time. Do you wish to represent yourself, or do
10 you wish Mr. DeMarco to represent you?

11 THE DEFENDANT: My response is I invoke counsel of
12 choice pursuant to the Sixth Amendment.

13 THE COURT: Given that Mr. Cosme will not answer my
14 question and thus I cannot find that he has knowingly and
15 voluntarily waived his right to counsel, I will ask Mr. DeMarco
16 to continue to represent him.

17 Mr. Cosme just made reference to various documents he
18 has sent. Among the documents I have are documents dated
19 June 29, June 30, July 3, two on July 4, July 7, July 8,
20 July 11, and July 12th. In large part the documents review
21 issues that we have discussed during this case on numerous
22 occasions. Included among those issues are that the evidence
23 presented at trial, including witnesses who Mr. Cosme
24 suggestions were lying, the victim impact statements and other
25 material disproves Mr. Cosme's guilt, calls into question the

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1 asset forfeiture and the like. Those motions are denied.

2 To the extent that Mr. Cosme discusses yet again
3 counsel of choice, we have been through this many times. As I
4 have noted today, I have indicated to Mr. Cosme that any time
5 counsel of choice files a notice of appearance, that notice of
6 appearance will be recognized and counsel may appear. No such
7 notice of appearance has been filed.

8 With respect to Mr. Cosme's repeated requests to
9 release funds so he can retain counsel of choice, that motion
10 is denied. It was discussed at the hearing.

11 Mr. Cosme notes that Mr. DeMarco's motion to be
12 relieved as appellate counsel in the Second Circuit in Docket
13 No. 17-1759, Document 13-2 was granted in Document 20. While
14 that is true, it was with respect to representing Mr. Cosme as
15 appellate counsel. Accordingly, it has no relevance here.

16 Mr. Cosme also makes reference to Pryor Cashman's
17 motion to withdraw in the Court of Appeals in Docket No.
18 14-1625, Document No. 62-1. That was the law firm's motion to
19 withdraw after argument of the appeal but prior to the decision
20 on the appeal on the bases, *inter alia*, that Mr. Cosme asked
21 counsel to make arguments that were not warranted on the facts
22 or the law, that Mr. Cosme failed to cooperate with counsel,
23 and that Mr. Cosme repeatedly made statements to the government
24 that the firm was representing him inadequately. The Court of
25 Appeals denied that motion to withdraw in Document No. 67.

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1 Again, however, that related to representations in the Court of
2 Appeals and is not applicable here.

3 As we've already discussed today, the same findings
4 are relevant to K&L Gates. No notice of appearance has been
5 filed by the firm and the Court has no other indication that
6 the firm has been retained by Mr. Cosme.

7 With respect to Mr. Cosme's argument that there was
8 abbreviated time for him to review the presentence report,
9 counsel consented to the abbreviated time period.

10 With respect to Mr. Cosme's requests for hearings not
11 related to the sentencing, hearings with respect to the asset
12 forfeiture and alike, they are denied.

13 With respect to Mr. Cosme's arguments in these papers
14 with respect to Mr. DeMarco, to the extent these are motions,
15 they are denied. Mr. Cosme notes and argues that Mr. DeMarco
16 conversed with the jurors. The record will reflect that
17 Mr. Cosme informed the Court that a juror said good morning to
18 him.

19 Mr. Cosme notes on several occasions that on one
20 occasion in the courtroom he alleges that Mr. DeMarco was
21 "reeking of alcohol." There is no evidence of that and the
22 Court did not observe anything that would lead the Court to
23 believe that that was true.

24 Mr. Cosme complains that Mr. DeMarco was late on an
25 occasion. That is in fact true. He called ahead and there was

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1 no prejudice because of it because nothing happened.

2 Mr. Cosme makes various requests that the sentencing
3 be adjourned or stayed in light of his pending interlocutory
4 appeal. Those motions are denied.

5 In sum, all of the motions contained in Mr. Cosme's
6 recent papers are denied.

7 Mr. DeMarco, have you and Mr. Cosme had adequate time
8 to review the presentence report?

9 MR. DeMARCO: I believe he has, your Honor. I
10 provided copies on several occasions to Mr. Cosme.

11 THE COURT: Yes, sir.

12 Are there any objections that you wish to make to the
13 presentence report?

14 MR. DeMARCO: Not as it is constituted today, your
15 Honor.

16 THE COURT: Thank you.

17 I have read Mr. Cosme's objections and they are
18 denied.

19 Is there any reason the presentence report should not
20 be made part of the record?

21 MR. DeMARCO: No, your Honor.

22 THE COURT: Thank you.

23 With respect to the offense level computation, I
24 accept the findings of the presentence report set forth at
25 paragraph 58 through 64. The government in its sentencing

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1 memorandum argues for an adjustment for obstruction of justice.

2 Does the government wish to be heard on that matter?

3 MR. SOLOWIEJCZYK: Your Honor, just briefly. I don't
4 want to rehash things that we put in our papers, but the
5 findings that the Court would need to make is that the
6 testimony provided by Mr. Cosme at trial concerned material
7 matters and it was given with the willful intent to provide
8 false testimony rather than by confusion or mistake or faulty
9 memory.

10 Respectfully, your Honor, there are a host of examples
11 where Mr. Cosme during his testimony provided willfully false
12 testimony. Just a few. With respect to the CosmoDabi website,
13 which was discussed extensively during his direct testimony and
14 in his cross-examination, Mr. Cosme's testimony was that though
15 he knew of the web address, www.CosmoDabi.com, he had no
16 knowledge of the content of that website in December 2010 and
17 January 2011. This was, your Honor, respectfully preposterous
18 and obviously facially and willfully false. Mr. Cosme was
19 signing e-mails with the web address www.CosmoDabi.com at this
20 same time. The notion that the company that he ran by himself
21 he was not aware of all the false claims made on that website
22 is farcical, your Honor, and it shows a willful intent to
23 mislead the jury.

24 There are countless other examples. The assets that
25 CosmoDabi had under management, what Mr. Cosme intended to do

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1 with the Ferrari. Plaintiff purchased it to transport gold
2 solely, but there was testimony he was actually driving around
3 Long Island in that vehicle and using it for his personal use.
4 I could go on, your Honor, but there is more than an ample
5 record here to make the obstruction findings under the
6 guidelines because the testimony was very clearly willfully
7 false.

8 THE COURT: Thank you.

9 Mr. DeMarco, do you wish to be heard on this item?

10 MR. DeMARCO: Your Honor, I object to the two-level
11 enhancement for the following reasons: Mr. Cosme merely
12 exercised his right to testify in his own behalf. The jury
13 heard his testimony and discredited it and convicted him of
14 both counts of the indictment. What the Court has to remember
15 is that Mr. Cosme was testifying in 2017 about events that
16 occurred in 2010 through 2012. I think much of his testimony
17 was due to a lack of memory, a lack of ability to recall, and
18 confusion on his behalf. It wasn't an intentional obstruction
19 or perjury as the government alleges. We couldn't to any
20 two-level enhancement.

21 THE COURT: Thank you.

22 Anything else from the government on this?

23 MR. SOLOWIEJCZYK: Nothing further, your Honor.

24 THE COURT: Thank you.

25 The Court finds that while Mr. Cosme indeed had the

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right to go to trial and to testify in his own defense, in so testifying he intended to give false testimony and in fact did so not because of any confusion, negligence, lack of memory or any other innocent explanation. For example, Mr. Cosme testified that he didn't know how the CosmoDabi website came into existence and didn't have any idea about the content of that website. At the time, however, Mr. Cosme was the sole person running CosmoDabi, and of course he did acknowledge on the stand that he was the CEO and president of that entity. Mr. Cosme testified on cross-examination that while he was aware of the existence of the web address www.CosmoDabi.com, he was not responsible for creating the content and indeed had no knowledge of the content of that website in or about December of 2012.

December of 2012 was at or about the time that Mr. Cosme was in contact with the International School about the fraudulent loan --

MR. SOLOWIEJCZYK: Your Honor, my apologies. I believe it was December of 2010.

THE COURT: I am sorry. I can't even read my own writing. Thank you.

December of 2010 was at or about the time Mr. Cosme was in contact with the International School and during the time when he sent e-mails and various hard copy correspondence to the school that included the CosmoDabi website in his

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1 signature block.

2 In his testimony then in effect Mr. Cosme testified
3 that he didn't know that the content of the website that he had
4 included in his signature block in his e-mails and on the
5 letterhead of CosmoDabi when he was corresponding with the
6 International School. Given that Mr. Cosme was the only person
7 at CosmoDabi, his denial of the knowledge of the contents of
8 the website is incredible and as I said I find it to have been
9 willfully false. Certainly the contents of the CosmoDabi
10 website was material in this case because the website contained
11 numerous false representations with respect to the nature of
12 CosmoDabi's business, its clients, its assets under management,
13 and Mr. Cosme's prior employment that the International School
14 relied upon in deciding to provide Mr. Cosme with its \$5.5
15 million deposit.

16 The CosmoDabi website also stated that Cosme had
17 assets under management in excess of \$11 billion and Mr. Cosme
18 testified that he in fact did manage \$11 billion of assets. On
19 cross-examination, he acknowledged that perhaps it was slightly
20 less than the \$11 million in assets under management. The
21 evidence at trial, however, showed neither Mr. Cosme nor his
22 company controlled or managed anything close to \$11 billion at
23 the time that CosmoDabi was making representations to the
24 International School and at the time when the \$5.5 million
25 deposit was received from the International School.

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1 Mr. Cosme also testified that the Ferrari he purchased
2 using International School funds was "exclusively set up to
3 transport gold," and that he was" using that particular car to
4 transport gold." That is in the transcript at page 759. Aside
5 from the fact that the claim is preposterous, Shirley
6 Goldberger, Mr. Cosme's aunt, testified at trial that she had
7 seen Mr. Cosme driving the Ferrari around Long Island as his
8 personal vehicle, including driving it to Ms. Goldberger's
9 mother's home. That is at the transcript at page 565.

10 We recall at trial the government presented an
11 elaborate spreadsheet showing into which bank accounts the
12 International School's \$5.5 million went and showing the
13 transfers from that bank account to other of Mr. Cosme's bank
14 account and transferred out those bank accounts to purchase
15 certain assets such as the cars and to fund his stay in Las
16 Vegas and his gambling debt at a Las Vegas casino.

17 Mr. Cosme testified on the stand that "As far as the
18 Las Vegas expenditures go, all of the calculations I would say
19 are incorrect. None of them are verifiable. From what I have
20 heard from this Venetian Palatso person that was here to
21 testify, and I could just say that all of that is in accurate.
22 All of the calculations are inaccurate. Some of it is
23 accurate, like the stuff you see on the debit cards. That
24 stuff is accurate. And all of that money is mine own money.
25 It has nothing to do with any school money or any accounts that

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1 the school money went in to my knowledge based on the tracing."

2 Transcript at 763.

3 The evidence at trial showed undeniably that the
4 International School's \$5.5 million was wire transferred into
5 the CosmoDabi Chase account ending in 6625 on January 21, 2011.

6 At that time the account had a balance of \$1,000. Mr. Cosme

7 then transferred over \$5 million of those funds to the

8 CosmoDabi Chase account ending in 6619 on January 25, 2011.

9 Mr. Cosme then began spending funds in Las Vegas using the 6619

10 account and the 6625 account in February 2011 through June 2011

11 for a total of amount of \$87,386. These were plainly

12 International School funds, and Mr. Cosme as the individual who

13 controlled these bank accounts certainly knew that.

14 Again, I find that this was willfully false testimony,

15 that it was material, and that it was not given as a result of

16 any confusion, negligence, lack of memory, or any other

17 innocent reason. Accordingly, I find that because Mr. Cosme

18 testified willfully, falsely with respect to material matters,

19 paragraph 65 should reflect a two-point increase for

20 obstruction of justice. That then makes paragraph 66 the

21 adjusted offense level 29 and paragraph 69 the total offense

22 level 29.

23 With respect to the defendant's criminal history, I

24 accept the findings of the presentence report set forth at

25 paragraph 70 through 75.

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1 Counsel, as I mentioned, I have the government's
2 sentencing memorandum dated July 7. I have Mr. DeMarco's
3 sentencing memorandum dated July 5. I have a fax document
4 received July 3 that purports to be affidavits by Patricia
5 Tsien and Thomas Cleveland. I also have another copy of those
6 documents and others received by fax July 8th, 2017. I also
7 have a victim impact statement sent by the government on
8 July 3, which includes a letter from Dr. Penland dated July 1,
9 2017.

10 Are there any other written materials that I should be
11 looking at, counsel?

12 MR. DeMARCO: Not my me, your Honor.

13 MR. SOLOWIEJCZYK: No, your Honor.

14 THE COURT: Mr. DeMarco, do you wish to speak on
15 behalf of Mr. Cosme?

16 MR. DeMARCO: Yes, your Honor. May I?

17 THE COURT: Yes sir.

18 MR. DeMARCO: I will be brief and add a few points,
19 your Honor, to the submission I filed with this Court. I want
20 to point out several things. Mr. Cosme is 51 years old today.
21 He has no criminal history and he has a lengthy employment
22 history. For many years he was the principal in an employment
23 agency, Mar-El, and another one. As the letters appended to my
24 submission indicate, he is a kind man. He is generous to his
25 family. He is devoted to his family and he is a good friend.

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1 Now, your Honor, in preparing for sentencing, I do
2 research about other cases in the district and sentences
3 imposed on wire fraud cases. I came across an interesting case
4 that was handled by Judge Rakoff. There was a sentence imposed
5 by Judge Rakoff on November 2nd, 2016, and the case name is
6 *United States v. Andrew Caspersen*, 16 CR 414. I just want to
7 compare and contrast Mr. Caspersen in that case to Mr. Cosme in
8 this case. Now, all of the information that I am proffering to
9 this Court with respect to the Caspersen case was taken from
10 the government's sentencing submission in that case. I believe
11 it is Document No. 32 that was filed prior to sentencing.

12 Now, Mr. Caspersen was 39 years old. Mr. Cosme is 51
13 years old. Mr. Caspersen was the son of a very well to do
14 family. His father was a multi-millionaire. Mr. Cosme was
15 raised by a single parent in Suffolk County. Mr. Caspersen
16 attended Princeton undergrad and he got a JD from Harvard.
17 Mr. Cosme earned a few credits from Suffolk Community College.

18 From the 2014 to 2016 Caspersen ran a Ponzi-like
19 scheme, and to quote the terms used by the government they
20 described it as "sophisticated and elaborate fraud." He bilked
21 dozens of investors of nearly \$100 million. He stole from
22 family, friends, college classmates, and abused the trust of
23 those who had trusted him. Mr. Cosme stole \$5.5 million from
24 TCIS. Caspersen had a history of defrauding people. In fact,
25 according to the government's sentencing submission in that

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1 case, he had bilked his own mother of \$1.2 previously; but she
2 decided since it was her son, she wasn't going to seek to have
3 him prosecuted. This is Mr. Cosme's only criminal conviction.
4 There have been no allegations that he has engaged in this
5 conduct prior to these dealings with TCIS unlike Mr. Caspersen.

6 Mr. Caspersen pleaded guilty and the loss amount he
7 stipulated to was a loss amount greater than \$25 million, but
8 the restitution he agreed to pay in that case was \$36 million.
9 It was a sophisticated scheme by Mr. Caspersen versus a very
10 unsophisticated scheme here by Mr. Cosme, a bare bones website
11 that was relied upon by TCIS so they claim. Mr. Caspersen was
12 sentenced by Judge Rakoff to four years, 48 months. In that
13 case Caspersen also allegedly stole some identities of some of
14 the people he also defrauded. Judge Rakoff sentenced
15 Mr. Caspersen to 48 months. Four years in jail. In this case
16 U.S. Probation is recommending a sentence of 94 months
17 imprisonment.

18 Now, I know your Honor is concerned about sentencing
19 parity. The only difference that I can think of between
20 Mr. Caspersen and Mr. Cosme, which works against Mr. Cosme, is
21 the fact that he exercised his constitutional right to go to
22 trial and he exercised his right to testify at that trial. The
23 loss amount was much less than Mr. Caspersen. It was the only
24 time he has ever been accused of doing this type of act and yet
25 Probation is recommending a sentence almost twice as long as

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1 what Mr. Caspersen received. I just wanted to point that out
2 for your Honor for the sentence that you are considering.

3 Another thing that is troubling me about this case,
4 and with my deepest and sincerest condolences for the people at
5 TCIS, the folks from TCIS traveled from South Korea to New York
6 City to meet with Pat Tsien, Jay Peck, and ultimately
7 Mr. Cosme. They spent a lot of time, a lot of money to travel
8 from South Korea to New York City to trace down their \$5.5
9 million or the loan that they were seeking for that \$5.5
10 million investment. Had they used a fraction of that time,
11 your Honor, to exercise some due diligence, to check
12 references, to ask around, I submit we would probably not be
13 here today.

14 Also, what troubles me about this case, your Honor,
15 and when we're speaking about sentencing disparity, the
16 mastermind in my opinion based on everything I heard at this
17 trial and everything I read in discovery was Pat Tsien and Jay
18 Peck. They were the people who initially contacted TCIS. They
19 were the people who met with TCIS and Dr. Penland on Wall
20 Street. They were the people who introduced the folks from
21 TCIS to Mr. Cosme. They in my opinion masterminded this fraud
22 and Pat Tsien has never been charged. Jay Peck has never been
23 charged. But Mr. Cosme who is just a small piece to this fraud
24 was charged.

25 Your Honor, I am going to ask that you consider as I

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1 requested in my sentencing memorandum imposing the mandatory
2 minimum of a 24-month sentence. I think that is sufficient but
3 not greater than necessary for a 51-year-old man, who is before
4 this Court with his first conviction.

5 That's all I have to say, your Honor. Thank you very
6 much.

7 THE COURT: Thank you.

8 Mr. Cosme, do you wish to speak on your own behalf?

9 THE DEFENDANT: I do, your Honor.

10 THE COURT: Yes, sir.

11 THE DEFENDANT: Should I stand or sit?

12 THE COURT: Whatever you prefer, sir.

13 THE DEFENDANT: Okay. Thank you.

14 In regards to all the motions that you denied, I think
15 there is a lot of them.

16 THE COURT: I agree with you there, sir.

17 THE DEFENDANT: We agree on that. That is fantastic
18 in one way.

19 All of the facts that you cited -- respectfully, all
20 of the facts that you cited, which I think were purged or
21 produced to you by the government and some other sources I
22 suppose -- government agencies, affidavits -- it seems to be a
23 variance between the actual evidence adduced at trial and all
24 of these facts that you include to support your bases for
25 denying the motions and having the conviction be credible in

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1 addition to the variance in the numerical aspects of the case.
2 As an example Exhibit 911, an exhibit that was exhibited at
3 trial, the government's centerpiece allegation and the
4 conviction was all predicated off of the defendant not
5 investing \$5.5 million in the entirety.

6 At trial we saw Government's Exhibit 911 illustrating
7 in excess of \$5.5 million being invested or deposited into the
8 investment accounts of CosmoDabi and/or William Cosme. That
9 variance correctly removes and disproves any criminal intent.
10 If the government's position in our view is Cosmo was supposed
11 to take this \$5.5 million investment and then you look at the
12 accounts that they exhibited at trial, Exhibit 911, and that
13 spreadsheet illustrates \$6 million in investments into those
14 investment accounts, such as JPM 4500 in the Scottrade account.
15 That is just a variance that disproves the government's entire
16 case or centerpiece allegation including the conviction. So
17 that --

18 THE COURT: Mr. Cosme, I am happy to listen to you,
19 but we're here today now for the sentencing proceeding. We're
20 not here to argue any of the prior motions or going back over
21 that material. So I will be happy to listen to you on whatever
22 you would like to say about sentencing, sir.

23 THE DEFENDANT: Sure. Your Honor, I don't believe I
24 was confused about what the scope and the nature of these
25 proceedings are today. I believe that the scope and nature of

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1 these proceedings are postconviction having to do with the
2 sentencing --

3 THE COURT: Yes, sir.

4 THE DEFENDANT: -- and the sentencing guidelines and
5 the computation --

6 THE COURT: Yes, sir.

7 THE DEFENDANT: -- of the alleged punishment, which
8 includes but is not limited to the forfeiture, which is a whole
9 other subject that I would like to discuss with you if I may.
10 So I am not trying to get off course and give up scope. I
11 think the fact that there is such a variance and an
12 overwhelming variance in the evidence adduced at trial and the
13 evidence put into the PSR 1 and 2, meaning the revised and
14 originals, that I have not honestly had time to review with
15 counsel. I mean we -- I am not sure what your perception is of
16 that, but I have not sat down with comp counsel and reviewed
17 the PSR 1 and PSR 2, the revisions of the sentencing
18 memorandum, nor have I sat with counsel during the PSI
19 interview or attempted Interview 1 and 2. It wasn't something
20 that we completed. I think those are significant issues in
21 addition to my not reviewing any and all of the objections that
22 the government put in after the PSR 1. PSR 1 had some
23 objections by the government and there were, I would say, at
24 least 20. So the whole document itself, as I stated in one of
25 my communications to you, 98 percent of it is inaccurate or

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1 untruthful depending on how you look at it.

2 I think all of those things in aggregate add up to you
3 should take a second look at all of this stuff in detail. I am
4 not trying to retry the case, but trying to take the evidence
5 adduced at trial looked most favorable -- in the light most
6 favorable to the government and correct it so I don't get stuck
7 with 22 years in jail or even two years in jail. I think once
8 we figure it all out correctly, I think it will boil down to a
9 misunderstanding and a couple mistakes that the government
10 made. Unfortunately it is here at sentencing for whatever
11 reason, but I think apart of the sentencing pursuant to
12 criminal -- rules of federal procedure Rule 32.2 includes but
13 is not limited the defendant speaking on its own behalf in
14 regards to these issues that could impact the computation of
15 the Sentencing Guidelines.

16 So I think it is so significant and the variance is so
17 tremendous that we should absolutely take a serious look or
18 more serious look or a second look at all of these things
19 because none of the facts that were presented to you, your
20 Honor, are correct. Even the record -- even the recitation of
21 the transcript about -- in one instance there is talk about
22 some Ferrari purchased in 2011 or 2012. That particular
23 instance is one example of many. That was after the client
24 defaulted and admitted that they defaulted off of their
25 contract, which is on the face of the contract. The default

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1 terms exist on the face of the contract. And if we ever looked
2 at the contract in its entirety, which has not happened once in
3 all of these proceedings since 2012 to my knowledge, we would
4 see that the client was by far in excess in violation of all of
5 the terms and conditions of their contract.

6 Again, I am not trying to reargue it, but what is
7 being presented to me and being presented to counsel in regards
8 to all of these issues that affect or impact the computation of
9 the sentencing, once they are corrected there would be no need
10 for sentencing or no need for forfeiture in addition to the
11 forfeiture not even being authorized by Congress in regards to
12 Statute 982, the criminal forfeiture that was in the
13 preliminary sentence -- the preliminary forfeiture order, which
14 had content in it that made it a final forfeiture. So if you
15 look at the statutes that the government put into that
16 particular document, the PFO, the preliminary forfeiture order,
17 Congress does not even authorize forfeiture for those
18 particular statutes.

19 And the most recent document that I have seen, legal
20 document, that I have seen was the final forfeiture is going to
21 be -- going to be pursuant to Section 981, which is the
22 civil -- judicial civil asset forfeiture, not a criminal
23 forfeiture, which contradicts the PFO, preliminary forfeiture
24 order, in addition to it contradicting the language in the
25 preliminary forfeiture order that says it is a final

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1 forfeiture. In addition to Congress not authorizing forfeiture
2 for wire fraud as an example in this case that did not affect a
3 financial institution. Or the other charge aggravated identity
4 theft, 1028(A), Congress does not authorize forfeiture for that
5 either. So it does authorize for 1028, but that is not what is
6 charged.

7 So we have defects in the forfeiture pursuant to the
8 applicable or inapplicable statutes. So we have that issue
9 which is part of the sentencing punishment computation. There
10 is a money judgment. It mentions a money judgment in there as
11 well. Some of these statutes that the government is using in
12 these particular forfeiture documents do not even allow money
13 judgments, criminal forfeiture, or some other activity that the
14 government is wanting to respond to in addition to all of the
15 forfeiture being in violation until this day of CAFRA. So
16 there is a whole bunch of stuff that I think needs to be looked
17 at that does affect the computation of the sentencing
18 guidelines and the money factor and the ultimate restitution.

19 As far as the restitution goes, there is a document
20 out here. It is Document 304-2. That particular document,
21 Dr. Penland, who I believe is here today, testified in a court
22 of law in another tribunal that he received a loan from
23 CosmoDabi and he came to trial in March, last March, and told
24 everybody at trial that he never received a penny from
25 CosmoDabi. So the variance is so significant. Why would a

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1 victim wanting to receive restitution to the tune of \$11
2 million for the interest of the alleged crime of \$5.5 million
3 in fraud come back to the United States and ask for that kind
4 of restitution when in another tribunal he absolutely in a
5 Court of law under oath said that he had received a loan from
6 CosmoDabi in Docket 304-2. That particular issue is the
7 perjury in the case.

8 That particular issue is the fraud in the case.
9 Regardless of what the outcome at trial was, that particular
10 issue is a reality. It is a fact. He said it. It is on
11 record. He said it to get out of what it looks like a set of
12 series of criminal charges that he was charged with in South
13 Korea intrinsic to this particular transaction. I think he did
14 it to get out of it and he lied in the Korean court and he lied
15 in the Southern District here and he lied to the FBI in 302
16 affidavits. And the variance between all of this is so
17 significant that it is not even a fraud by the defendant. The
18 defendant in this particular case is actually the victim
19 ironically as the record could show, as the evidence adduced at
20 trial can show.

21 So that is something I would ask for your Honor to
22 take a good second look at because if it is not looked at and
23 it is not corrected, then the defendant could actually end up
24 facing many years in jail when he doesn't even belong in jail,
25 when his victim belongs in jail, which is a possibility if you

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1 take a look at that particular testimony of Mr. Penland, which
2 I presume was okayed and approved by his entire board. So I
3 would ask your Honor to take a second look at that.

4 I know we discussed that once before during trial week
5 and your Honor had mentioned that she would take a look at
6 that. We just didn't get a chance for whatever reason to get
7 back to that issue, but I think maybe today we would get an
8 extension of time or an adjournment would be an excellent time
9 for us to take a serious look at that issue because it is so
10 significant. It proves the government's case even if we looked
11 at it in a light most favorable to the government and based on
12 the evidence adduced at trial. Interesting what we saw in
13 Exhibit 911, the entire \$5.5 million loan investment, generated
14 \$48 million in gross trade proceeds from the trading accounts
15 that the government did the allege trace on. We looked at all
16 that stuff closely and it wouldn't take long. It would change
17 the entirety and the outcome of these proceedings and change
18 the computation of the sentencing guidelines.

19 THE COURT: Yes, sir. Thank you.

20 THE DEFENDANT: I wasn't finished.

21 THE COURT: Go ahead.

22 THE DEFENDANT: I also have with me a copy K&L Gates.
23 You mentioned you haven't seen anything produced to the Court
24 with K&L Gates' willingness to represent the defendant. I
25 wanted you to have a copy of it. It is fully executed and it

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1 actually articulates the dates they will be ready, willing and
2 able to come into the case to represent me because they were
3 away for the past month on some other trials. And it has been
4 tough because I was actually hospitalized in the past couple
5 days and I have not been getting any legal mails for whatever
6 reason. Some of the mails in the system were diverted I
7 believe because the MDC or the jail was on lockdown or some
8 riots or violence going on. So I wasn't able to really get on
9 the computers, which is limited anyway, or get on any of the
10 phones and communicate with you in the way I would normally do
11 it. I couldn't get to Mr. DeMarco because I don't have his
12 e-mail hooked into my TRULINCS because he didn't accept it yet
13 for whatever reason.

14 (Continued on next page)

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1 THE DEFENDANT: And I had no phone communications with
2 Mr. DeMarco, and there's no way for me to communicate with him
3 anyway on the phone. I can't leave a message. All I can do is
4 try to call there and hope that he would respond or mail him
5 things and I tried to mail him and I had somebody drop mailings
6 off to him in his offices. Maybe he wasn't there. He refused
7 some of those letters that I dropped off.

8 So I have a host of reasons what I believe are
9 credible that would lend to us taking a really good look at
10 some of this stuff and maybe taking a second look at some of
11 this stuff so we could correct it and get to what the real
12 issue is. And I really think based upon the evidence adduced
13 at trial and based on Mr. Hwang and Dr. Penland's testimony at
14 trial, I think that they verified themselves that they
15 committed the fraud.

16 As far as the website goes, you had mentioned
17 something about the website in regards to perjury. The
18 website, the school official, Thomas Hwang, during his
19 testimony testifies that the website link or the website was
20 not given to him by me or by the defendant or by Omni or
21 Patricia Chen or Thomas Cleveland. He testified exclusively
22 that that particular website link or address was something that
23 he found on his own research. He did his own research on the
24 web and he found it on his own. And if you looked at the
25 evidence that was exhibited at trial in regards to that

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1 particular web link, it wasn't even a website. It was an
2 address. It was a link. It wasn't a website like
3 www.CosmoDabi.com. It was an entirely different URL.

4 Now, a URL is not a website and a website is not a
5 URL. And just because somebody makes reference to a website
6 address doesn't necessarily translate to it having the web
7 content that is associated with that web address. And I think
8 that's where the government is really going down the wrong path
9 with that. It's just I mean the testimony used at trial does
10 not match what the facts show.

11 And if we looked at the website graphics that the
12 government actually had in the 3500 and I believe that was
13 exhibited at trial, the dates, the date and time stamp on those
14 particular web shots don't even match the date of the
15 transaction. But the government relies exclusively on the
16 website kind of being the genesis of this inducement of this
17 alleged fraud. So if that's the case, why didn't the
18 government produce graphical websites of CosmoDabi.com with
19 dates that actually match the inducement period.

20 That being said, there was no inducement. The
21 government has that evidence, then let's see it. The burden
22 was not met based on that, based on the facts, based on what
23 was exhibited, based on the evidence adduced at trial. So
24 there is a serious variance in that website issue that also is
25 derived from the school victim's testimony at trial. And my

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1 testimony or the defendant's testimony at trial is precisely
2 what I'm saying now. It hasn't changed. The evidence that was
3 adduced at trial basically showed there was somebody
4 communicating it. There was a CosmoDabi.com website. That's
5 not Mr. Cosme saying or having a Cosmo Dabi website. A
6 reference to it does not mean he has it. If you look at all
7 the communications and you look at all of the testimony that
8 was provided by the school officials, there was no direct
9 communication with the school from Mr. Cosme during that
10 alleged inducement period.

11 So not only was there no communications or direct
12 communications by Mr. Cosme at that time, there was also no
13 reference of any websites or any investments of \$5.5 million
14 conditionally guaranteeing \$55 million in return at the JFK
15 meeting. That particular meeting, Dr. Penland and Dr. Hwang
16 testified that, you know, there was no guarantee of anything
17 and Mr. Cosme did not present any websites to them in any way,
18 shape, or form, or mention any websites to them, which was the
19 case.

20 And as far as witnesses go, I think Rule 32 allows
21 witnesses at sentencing, if I'm not mistaken, as long as
22 they're compliant to, I think, Rule 26. So what I wanted to do
23 was have my witnesses ready, but I had no communications with
24 Mr. DeMarco and I was hospitalized a couple days prior to the
25 day of sentencing and the day after.

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1 THE COURT: As I mentioned to you, sir, I've read both
2 of the affidavits. I think it was a joint affidavit by
3 Ms. Chen and Mr. Cleveland.

4 THE DEFENDANT: You've seen those. And I wanted to I
5 guess touch a little bit on that. I think the affidavits are
6 extremely important, but I think we also missed the boat on
7 getting those particular witnesses to trial. And I thought it
8 would be more of a positive thing as it relates to the impact
9 of the sentencing guidelines to have those witnesses here.

10 And the issue I have with it now is the adjournment
11 that we had from the 12th to today was so fast. There was not
12 enough time for me or counsel coming in to react. I never
13 thought that you'd be able to adjourn the sentencing so
14 quickly. I thought we'd get at least a week or two so we could
15 get ourselves together and get the witnesses and have some
16 witnesses present at this particular proceeding because I think
17 it would make a difference. In addition to you having those
18 affidavits, I think there's some testimony by them based upon
19 what I've heard and some of the research and speaking to them
20 that could lend tremendously to what I'm saying to you in
21 regards to I believe that Dr. Penland's claim from the
22 beginning is the fraud here.

23 So I would like -- and I know you said no about this.
24 You kind of said no in regards to everything and you kind of
25 denied everything in regards to the adjournment. But I think

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1 it's in the best interest of justice to actually give this a
2 second look. Every once in a while, there's some credibility
3 at the 11th hour that could possibly turn things around. It's
4 not a desperate ploy. It's something that's based on facts and
5 the like looked at most favorable to the government. And I
6 don't see why any reasonable judge -- and I respect your Honor
7 tremendously -- would not allow me some time to give the Court
8 an opportunity to review some of these things on a second look
9 in light of the seriousness of the nature of the charges and
10 the punishments that could be inflicted upon Mr. Cosme.

11 THE COURT: Thank you, sir.

12 Does the government wish to be heard?

13 MR. SOLOWIEJCZYK: Your Honor, just briefly, we just
14 want to have the record be clear that Mr. Cosme has reviewed
15 the PSR with counsel. That was the one thing he said --

16 THE COURT: Mr. DeMarco, did you wish to comment on
17 the remark about the presentence interview. And I do recall
18 there was some back and forth and that Mr. Cosme had refused to
19 go and then we came to court and I informed Mr. Cosme that it
20 was for his own good and my understanding was that he then did
21 attend --

22 MR. DEMARCO: That's right, Judge.

23 THE COURT: -- and was somewhat cooperative, but not
24 entirely.

25 MR. DEMARCO: Here's how it transpired. When I went

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1 to do the initial presentence interview with Probation Officer
2 Kim, Mr. Cosme refused to take part in the interview without
3 counsel of choice. He informed Officer Kim that I was not his
4 counsel of choice and that he would not sit for the interview
5 with me present and only with counsel of choice.

6 We then convened in court and your Honor gave a
7 deadline for Mr. Cosme to sit for the presentence interview. I
8 had contacts with Mr. Kim, Officer Kim, and I indicated to him
9 that he should attempt, if he desired to do so -- Mr. Cosme has
10 not retained new counsel. He has indicated to me in several
11 communications through others or directly that he would not sit
12 for the presentence interview. I instructed Officer Kim that
13 should Mr. Cosme participate in the interview, he should not be
14 asked anything about the facts of this case or anything about
15 his criminal history, as is my normal practice at these
16 presentence interviews. And Officer Kim was successful in
17 interviewing Mr. Cosme.

18 I did attempt to review the first disclosure with
19 Mr. Cosme, and he would have nothing of it. I don't want to
20 get into the details of that meeting, but suffice it to say, he
21 would not allow me to review that first PSR with him. I then
22 subsequently provided him several copies of the initial
23 disclosure, as well as a copy of the final disclosure with
24 probation's recommendations. As you can see, Mr. Cosme did
25 review the PSR because he filed his own objections to the PSR.

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1 THE COURT: Yes, which I noted that I have received
2 and read.

3 MR. DEMARCO: It's important to note that between the
4 day of trial and today, Mr. Cosme has indicated to me
5 indirectly and directly that he really wanted nothing to do
6 with me as his counsel representing him in this case. After my
7 attempt to review that initial disclosure with him, I decided
8 that it made no sense for me to attempt to do so again. So in
9 the alternative, I provided him with copies of all the
10 submissions made by me, the government, and U.S. probation in
11 lieu of a personal meeting with him. That just pretty much
12 details it.

13 THE COURT: Yes, sir. Thank you.

14 MR. SOLOWIEJCZYK: Your Honor, just to add to that, it
15 appears clear on the record that Mr. Cosme did review the PSR,
16 as is shown by the fact that he submitted objections to the PSR
17 to your Honor.

18 THE COURT: Yes, sir.

19 MR. SOLOWIEJCZYK: So it does appear that we've
20 complied with the letter of the Court.

21 THE COURT: Yes indeed. I'm satisfied that Mr. Cosme
22 has reviewed the materials.

23 Does the government wish to be heard further?

24 MR. SOLOWIEJCZYK: Yes, briefly, your Honor. Your
25 Honor, the government is not going to rehash what was in our

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1 submission; just a couple of points to note for your Honor's
2 consideration before imposing sentence.

3 I think what stands out about this case, your Honor,
4 is the brazen nature of the fraud. This is not a case where
5 somebody made one mistake or two mistakes, was running a
6 legitimate business, was trying to invest money on behalf of
7 clients and somehow was led astray. It's nothing of the sort.
8 Your Honor, this was a fraud from the outset. Mr. Cosme lied
9 about who he really was, what his business really did, and the
10 entire -- the website, everything, it was all designed to dupe
11 an unsuspecting victim and that's what TCIS was in your case,
12 your Honor, respectfully.

13 Mr. DeMarco spoke at length about the Caspersen case.
14 First of all, that's one case of many, many cases in this
15 district involving wire fraud. Second of all, something that
16 does separate this case, your Honor, is the fact that this was
17 an unsophisticated victim by all accounts. And Mr. Cosme
18 preyed on victims like TCIS, a school that, yes, they did not
19 do all of the due diligence. But that in some ways is what's
20 so remarkable and what's particularly terrible about the fraud
21 that was perpetrated here, your Honor, is that Mr. Cosme looked
22 for somebody to dupe and he found them. And they put their
23 trust in the wrong person, your Honor, obviously.

24 It's clear that Mr. Cosme intended to commit fraud
25 from the outset. As soon as he got the five and a half million

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1 dollars, he began to spend it on himself. So this is not a
2 case of someone who had good intentions and then down the road
3 made some mistakes. This was from the get-go he planned to
4 steal five and a half million dollars from an international
5 missionary school. And that conduct, your Honor, respectfully,
6 warrants a sentence within the guidelines range because the
7 conduct is abhorrent.

8 Something that obviously separates this case from the
9 Caspersen case is in Caspersen, the defendant, No. 1, took
10 responsibility ultimately for what he did. This is a defendant
11 who to this day blames the victim and cannot accept the nature
12 of his conduct. He lied at trial. He continues to this day to
13 blame others for his own fraud. And that goes to a number of
14 sentencing factors; but one factor it certainly goes to, your
15 Honor, is deterrence. This is a defendant who needs to be
16 specifically deterred. It also goes to protecting the public
17 from future crimes. There is nothing about what's transpired
18 prior to this trial, during this trial, and during this
19 sentencing that would give anyone any comfort that Mr. Cosme
20 will not commit fraud again.

21 Another obvious distinction between this case and the
22 Caspersen case, your Honor, is my understanding of the
23 Caspersen case is that that defendant had a crippling gambling
24 addiction that explained at least part of his conduct. Here
25 there is no such explanation. Mr. DeMarco in his sentencing

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1 submission mentions that the defendant is 51 years old. This
2 was a grown man who decided to commit this crime. It wasn't
3 somebody who was a young man who made a mistake. And just
4 because the defendant will be older when he's released after
5 his sentence, whatever it may be, it's not going to protect or
6 prevent the fact that Mr. Cosme could commit fraud again.

7 Finally, another obvious distinction, your Honor, and
8 something that's very important as a relevant factor at
9 sentencing, and you're going to hear, I believe, from TCIS as
10 well, this fraud wreaked havoc on TCIS. They had to stop
11 construction of the school, and they to go into their operating
12 funds. And this school really came to the brink of ruin
13 because of Mr. Cosme's actions. This was not a case where you
14 have sophisticated investors or financial institutions that
15 were defrauded. Mr. Cosme's fraud really caused a very, very
16 serious harm to a school, a school whose sole goal was to
17 educate children in South Korea.

18 So, your Honor, the government respectfully submits
19 that when you take into account all of the 3553(a) factors, a
20 sentence within the guidelines range is warranted and necessary
21 in this case.

22 THE COURT: Thank you.

23 Is there any victim here who wishes to be heard?

24 MR. BELL: Your Honor, Dr. Penland is here. He's
25 making his way up now.

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1 THE COURT: Sir, would you state your name for the
2 court reporter, please.

3 MR. PENLAND: Thomas James Penland. Your Honor, thank
4 you for giving me the opportunity to be here again today in New
5 York and to thank you for the American justice system which
6 seeks to bring justice and righteousness around the world, not
7 limited to just this country, but to those who are mistreated
8 in other places. And it's an honor to be an American citizen
9 and representing an international school with citizens from
10 over 25 different nations looking and observing and seeing what
11 happens when a crime occurs within this justice system in this
12 country. So it's an honor to be here this afternoon in your
13 court.

14 I'm thankful for Paul Hastings firm which took our
15 case pro bono and represented us and worked with us to help us
16 to know what to do when we realized we had been abused and
17 taken advantage of and had been robbed. And we were fortunate
18 that a parent in our community was a lawyer, an attorney who
19 had worked with Paul Hastings in Hong Kong and had connections
20 and friends and contacts in the New York office and they took
21 our case pro bono. Otherwise, we would have spent a lot more
22 funds trying to represent ourselves against this situation and
23 so we're grateful to that.

24 And I'm grateful to the FBI and to all those who have
25 assisted us beyond -- outside of the areas of our knowledge or

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1 have expertise to know what to do. And I even thank our
2 defense attorney, the defense attorney for his work in applying
3 due process in this court and allowing the defendant to be
4 represented and to have a chance to tell his story and his
5 perspective.

6 This is not about me. It's about a school, Taejeon
7 Christian International School, TCIS. And we view this in our
8 school as an education process for all to learn from. It's
9 part of who we are. It will be part of our history as a
10 school. This happened to our school. We didn't expect it to
11 happen. We didn't plan it to happen. I'm an educator for over
12 40 years. I've been a teacher, middle school math and science.
13 I've coached teams. I've been a principal in public schools
14 and in private schools in Malaysia and Korea and here in the
15 United States. I never expected I'd be in federal court in New
16 York in a situation like this, but it happened. And we
17 consider it an education process, something we can learn from
18 and that we can teach our students about, civics and due
19 process, and what happens when crimes are committed.

20 So I'm grateful today to be here to tell you about the
21 victims. It seems like a lot of conversations have been about
22 Mr. Cosme, even his attempt to decide who is the victim. But
23 I'm here to tell you TCIS is the victim. Our school has
24 suffered greatly. And this is a great school. It was founded
25 in 1958, started by a group of missionaries to help educate

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1 their children in a country that had been colonized for 50
2 years and then the civil war occurred between warring parties
3 both within the country and international powers that
4 absolutely wreaked havoc and the land was nothing but a wreck
5 and the people were destitute. And in 1958, these group of
6 people like them, these missionaries and others, came to help
7 Korea and they made a difference and it's part of the miracle.
8 In the Han we call it this thing that inspires people in the
9 21st century of what happened in South Korea and to that
10 country and that culture. It's a story about you can come out
11 a winner and you can turn from ashes into something really you
12 can be proud of. That's South Korea today.

13 And our parents, the original founders of our school,
14 were part of that story. And they gave themselves generally to
15 help provide education for missionary children mainly, but also
16 for foreign children and for overseas Korean children who
17 traveled outside of the country and came back and did not fit
18 in the Korean system. In 1958, it started as a boarding school
19 and it's retained that history of boarding school, that history
20 of a Christian tradition.

21 It is the second oldest international school in South
22 Korea. It is reputable. It is well-known. It is
23 distinguished. It has a great history. There are great alumni
24 all over the world who are doing great work because of the
25 goodness of the education at TCIS. It is high quality. We

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were the second international school in South Korea to be accredited by a regional association here in the United States. The Western Association of Schools and Colleges accredits schools in California and Hawaii, but also accredits most of the international schools in east Asia. We were the second school; in 1971, we gained accreditation.

We were the first school to offer all three of the IB programs in Korea -- the primary year program, the middle year program, and the diploma program. We've had a long distinguished history of leading the way and providing quality education. And we just graduated 69 seniors this last year and they earned over 4 million in U.S. dollars in merit scholarships in universities around the world. These young people have a bright future and will contribute to good in our world.

However, we're a unique international school. If you Google Christian and IB, you don't find it very much. We're not a secular school. We're a faith based school. We take students in from all different faiths. And those without a practicing faith are welcome at our school. We're unique. We're not a CEO school. We're not in a capital city. Most of our parents are researchers and scientists. We're in the science and technology center of South Korea and our parents are professors.

I have parents in our school for years down through

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1 the 20 years I've been there who take out bank loans to pay the
2 tuition. I think the picture is somehow these international
3 schools are full of these rich people that have all this
4 affluency, but that's not true about our school. Not every
5 parent in our school has a lot of funds, and those are precious
6 funds that we were guarding and investing.

7 We're a not for profit school. I make a salary. I
8 have a contract with the board. Our board are volunteers.
9 Every employee has a contract. There's nobody taking or
10 skimming or taking more. We reinvest it back in the school.
11 It's always been a not for profit. It's known as a not for
12 profit school.

13 And to this day, we still scholarship missionary kids
14 at our school. They're now Korean missionary kids who go all
15 over the world, whose parents go all over the school working at
16 NGOs as medical doctors, as people making a difference in
17 countries like Yemen, Sudan, Iraq, Kosovo, Azerbaijan,
18 Kazakhstan, Laos, Cambodia, China, Mongolia, and in North
19 Korea. Those are the kids in the school. Those are the
20 parents. More than 30 students receive missionary kid
21 scholarships still. That makes our budget tight. We tie
22 10 percent of potential income by giving these seats and dorm
23 rooms up for these students. That's the tradition of our
24 school. We take pride in that. That made us financially
25 challenged at many times in our life as a school.

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1 We trusted Mr. Cosme. For various reasons, we chose
2 to trust him. We gave him five and a half million dollars.
3 That was difficult. That was hard. That was in 2011. The
4 damage has been severe. Our whole community was traumatized.
5 We went in many different directions. I called it a ripple
6 effect. It affected the students. The seniors didn't know if
7 they could graduate. I told people make a plan B. We have to
8 find investors. I don't have the funding. Parents crying is
9 my kid going to graduate. Have I invested it all and lost it
10 at this point? Teachers not knowing whether they're going to
11 have their jobs. Subcontractors on the construction site,
12 Korean poor guy not knowing if he's going to get paid off or
13 not. It created chaos everywhere. These are the victims that
14 are silent that I'm speaking for today. Our reputation was
15 damaged and soiled. People questioned our school, the
16 management.

17 Sentencing, that's your job, your Honor. I have no
18 comment on that. I don't know what the rules are and what the
19 guidelines are or the history of cases. I have no comment on
20 that. But forfeiture of funds and restitution of the original,
21 at least the original 5.5 million, seems to be just and
22 reasonable at this point. This is 2017, six years later. We
23 pay interest on loans still that we took out to cover those
24 funds.

25 I was recently informed that the government's asset

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1 forfeiture group may decide not to return the school's money
2 until after the defendant's appeal process is over. Your
3 Honor, that is simply not acceptable from our point of view.
4 The school has been through such an ordeal as a result of the
5 defendant's conduct. We've waited almost six years for the
6 return of the money we feel rightfully belongs to us. It was
7 our money. We are depending on that money. And to think that
8 we have to wait longer until the defendant is done litigating
9 his case, it's unjust.

10 Your Honor, I ask for any assistance that you can
11 provide in this regard to ensure that the money is returned as
12 promptly as possible to our school. As I mentioned, the school
13 is waiting for return of those funds to repay expenses it
14 incurred on the campus relocation projects and which are paid
15 for interest bearing loans that TCIS carries to this day.
16 Further delay in returning the funds will continue to cost the
17 school significant money and interest. If you would like, my
18 attorneys are here in the court and are able to speak further
19 to this point.

20 To Mr. Cosme, I encourage you to do the right thing,
21 sir. Drop the appeal. Work to bring restitution. Do the
22 right thing. Do the honorable thing. Give the money back to
23 the school. Help us put our school back in place. You can
24 live a constructive life. You can live a life that you can be
25 proud of from this point going forward. Without doing that,

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1 it's the destructive process ongoing.

2 Thank you, your Honor.

3 THE COURT: Thank you, sir.

4 Counsel, thank you for your assistance in this matter.
5 As you've heard, I have calculated the guidelines and certainly
6 take them into account. The total offense level in my view
7 accurately reflects the nature and circumstances of the
8 offense. With respect to the history and characteristics of
9 the defendant --

10 MR. BELL: Very briefly, your Honor.

11 THE COURT: Yes, sir.

12 MR. BELL: Mr. Solowiejczyk and I, we're not sure as
13 to whether you have in recognizing that the figure is accurate
14 actually stated what the guidelines figure is.

15 THE COURT: I think I did, but if we haven't, I'll do
16 it again.

17 MR. BELL: Thank you, your Honor.

18 THE DEFENDANT: Excuse me, your Honor. Excuse me,
19 your Honor.

20 THE COURT: Sir.

21 THE DEFENDANT: Sorry to interrupt you. Just on the
22 guidelines, sentencing guidelines, just for point of
23 clarification, I have not reviewed any guidelines or any plea
24 offers, one of which Martin Bell solicited me for going in pro
25 se state. I have not reviewed any of that with any of the

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1 counsels in the case, nor has Mr. DeMarco, I believe, as I
2 recall, gone over any guidelines with me or any potential
3 pleas.

4 THE COURT: Sir, the guidelines calculation was
5 contained in both copies of the presentence report which you
6 received.

7 As to pleas, Mr. Bell.

8 MR. BELL: I'll note this on the record just given the
9 concerns about the *Lafler* and *Frye* decisions. At no point over
10 the extended course of this litigation did our office make a
11 formal plea offer to Mr. Cosme. I believe that there was a
12 point while Mr. Cosme was pro se and communicating frequently
13 with our office, whether we wanted him to or not, when we did
14 encourage Mr. Cosme to let us know if he was interested in
15 seeking a pretrial resolution since that was something now
16 within his province as a pro se litigant. No positive answer
17 was given to that entreaty, and no formal plea offer was ever
18 made.

19 THE COURT: Thank you.

20 THE DEFENDANT: Your Honor, one more thing. I'm
21 sorry, excuse me. I did not finish my list of things on my
22 opportunity to speak. So I thought it would be a good idea to
23 finish that before you had computed your --

24 THE COURT: Okay. Do you have a lot more, sir?

25 THE DEFENDANT: I don't think it's a lot more. It's

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1 less than the initial.

2 THE COURT: All right. Perhaps it would be better if
3 we didn't go over items we had talked about in the past.

4 Matters directly relating to sentencing are the most relevant
5 now.

6 THE DEFENDANT: Sure. I thought that all of my issues
7 raised impacted the sentencing computation. But if you say it
8 did not, I respect your observation and I'll try to stick to
9 exactly what I feel will impact the computation for sentencing.

10 Dr. Penland mentioned something about money, wanting
11 the money back sooner than I guess the completion of the
12 appellate process. I'm not sure what the status is because of
13 the mail issue that we had recently and the mishap with the
14 hospital thing recently. There was mailings that were sent to
15 the MDC or the prison there that I had not received. I was
16 told that. And one of them was a mailing from the appellate
17 court in regards to 17 -- docket 17-59 CR U.S.A v. William
18 Cosme that was an interlocutory appeal which was filed
19 post-conviction, pre-final judgment, in regards to a refusal to
20 vacate or modify a injunction.

21 We're not sure what the government's position is when
22 it comes to preliminary injunctions or injunctions because
23 their PFO is titled as a PFO, preliminary forfeiture order, but
24 the contents is final order of forfeiture. And then there's
25 some discrepancies in regards to the asset forfeiture statutes

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1 that they used which are inapplicable to the offenses charged.

2 So that being said, and to I guess address one of
3 Dr. Penland's references to the money, for the record, I would
4 consider paying Dr. Penland the original balance that he feels
5 he is owed with several conditions, if that was something that
6 we would talk about. And we could have certainly gotten to
7 that sooner had he actually complied to his underlying
8 contract, contractual terms and conditions.

9 And the reason why I'm saying this is because, again,
10 the PSR has an elaborate amount of -- what I feel is an
11 elaborate amount of forfeiture and restitution and money
12 judgment in it. So there is an ability to pay. There is a
13 path for defendant to pay five point million -- 5.5 million or
14 10 million, whatever the number is that he feels he is entitled
15 to. Under certain conditions, I think that could be negotiated
16 and/or worked out. But for us to kind of take the appellate
17 process out of the equation, we would have to get to that
18 sooner, rather sooner than later. So I'm not sure if we should
19 handle that immediately today or perhaps tomorrow.

20 THE COURT: Sir, I've already denied the request for
21 an adjournment or a stay pending the interlocutory appeal.

22 THE DEFENDANT: Right. I'm a little confused on that
23 because I think the appellate court has jurisdiction over the
24 interlocutory appeal --

25 THE COURT: I'm talking about this proceeding. Your

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1 request to stay or adjourn this proceeding is denied, and the
2 basis of your request was the pendency of the interlocutory
3 appeal. Next.

4 THE DEFENDANT: Do we have the status of that
5 particular?

6 THE COURT: I have no idea. It's not my job to watch
7 the Court of Appeals, sir.

8 THE DEFENDANT: Right, but the issue with that though
9 is -- and I agree and I respect that. I respect your answer,
10 your Honor. I just want to make sure we don't make a mistake
11 because this is a very critical stage of the proceedings.
12 We're at the tip of the final judgment here. The issue seems
13 to be that if there is a interlocutory appeal that's pending in
14 the appellate court and they grant it, they'd actually docket
15 it, you know, the interlocutory appeal because it was a refusal
16 by the district court to vacate or modify a preliminary
17 injunction or an injunction.

18 THE COURT: Then they'll tell me what they want me to
19 do.

20 THE DEFENDANT: What I'm saying is if we knew now,
21 which we could know now, which I think we do know now, these
22 proceedings would be stayed anyway if it is under interlocutory
23 appeal.

24 THE COURT: Next.

25 THE DEFENDANT: Is that not true?

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1 THE COURT: Next.

2 THE DEFENDANT: All right. Recidivism rate, I think
3 that is a interesting valid point to raise in sentencing. I'm
4 not sure if I heard it, but I didn't -- I don't recall hearing
5 the word recidivism. The likelihood of the defendant
6 committing crime ever again given the profile that the
7 defendant has, there are dozens and dozens of Second Circuit
8 cases that have a recidivism rate calculation of zero for
9 individuals with my profile.

10 THE COURT: Yes, sir. I understood Mr. DeMarco to be
11 making that argument.

12 THE DEFENDANT: Okay. And the PSR, you had mentioned
13 that in the PSR I made some objections, so obviously I have
14 seen the PSR. If you looked at the submissions, I believe
15 those are only submissions A and B, not C, and I wasn't able to
16 get C to you. And I wanted you to have C so we could have a
17 full view of that, in addition to waiting for counsel of choice
18 to review those particular objections with me because the
19 government had the benefit of three prosecutors or several
20 prosecutors objecting to 23 points of the original PSR; and I
21 had absolutely no counsel to review the PSR or the revisions or
22 the government's objections or enable us to detail out some of
23 the money judgment/restitution/unlawful final forfeiture that
24 I'm seeing here potentially occurring today.

25 THE COURT: Next, Mr. Cosme. The reason you didn't

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1 have more benefit of counsel is because you chose not to. Next
2 item.

3 THE DEFENDANT: Your Honor, that's incorrect. The
4 characterization that you seem to believe is just incorrect.
5 There is no refusal whatsoever to have counsel review or me
6 deny the PSR meetings. I met Mark DeMarco with the officer.
7 And it was a surprise meeting. It wasn't scheduled. All I
8 said to both of them was I invoke counsel of choice. I need
9 counsel of choice to go over this PSR because it's a very
10 critical document and this case is very complex and that's who
11 I need to go over these particular papers with.

12 THE COURT: We've been through this before, sir. I
13 think we're repeating ourselves. Next item, please.

14 THE DEFENDANT: Your Honor, if you make mistakes,
15 respectfully, if someone makes a mistake 17 times, then it's a
16 mistake 17 times, right, whether it's me or someone else, it's
17 a mistake 17 times. If we correct it one time, we don't get to
18 17, and this is what's happening in this case from the onset.
19 These characterizations are just incorrect, as the facts are,
20 and all of these objections that counsel Solowiejczyk mentioned
21 and some of this information that Dr. Penland mentioned, such
22 as the financial condition of the school. He's asking you to
23 accelerate restitution so he can receive money earlier versus
24 later. In my view, he's still not entitled to money. However,
25 because of the school's situation, I would consider something

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1 like that under the right conditions, under the right
2 negotiation.

3 But as far as the sentencing goes, the financial
4 condition of the school prior to my ever getting involved with
5 that school was a disaster, and it wasn't presented that way to
6 me. It was presented very differently than what we found in
7 these audits. And that's one --

8 THE COURT: Mr. Cosme, Dr. Penland was speaking of the
9 financial condition of the school after the school paid the
10 \$5.5 million. That's what he was talking about.

11 THE DEFENDANT: Right. If you recall, which I'm sure
12 you don't at the moment, but if you recall testimony testified
13 at trial in March that he was able to finish his project,
14 according to him, through his Christian friends with proceeds
15 and loan proceeds he didn't have to pay back. So he doesn't --
16 my understanding was he got the money from donations or
17 whatever, Christian friends that helped him out, and he didn't
18 have to pay it back.

19 I agree after looking at the KPMG management letter
20 that there is substantial costs associated with that particular
21 construction project above and beyond the default date, which
22 is not even recognized here, which I'm not sure why.

23 THE COURT: I think we need to move on, sir.

24 THE DEFENDANT: Okay. But do you agree that the
25 restitution is part of the sentencing --

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1 THE COURT: Of course.

2 THE DEFENDANT: -- it does, right. So that's why I
3 raise that issue. I raise that issue because I believe --

4 THE COURT: Okay. Let's go to the next issue, please,
5 sir.

6 THE DEFENDANT: -- what is being presented there is
7 just not correct.

8 There is a issue of the sentencing memo. I have not
9 seen a sentencing memo. Is there one that I could see?

10 THE COURT: I'm sorry, sir. The government submitted
11 a sentencing memorandum, and Mr. DeMarco submitted a sentencing
12 memorandum.

13 THE DEFENDANT: I don't remember seeing DeMarco's
14 sentencing memorandum.

15 MR. DEMARCO: It was provided with the second
16 presentence report that you requested.

17 THE DEFENDANT: Did we review that? Was that reviewed
18 between us?

19 THE COURT: Let's talk to the Court, please, sir. I'm
20 waiting to --

21 MR. DEMARCO: Sorry, your Honor.

22 THE COURT: I'm waiting to hear the remainder of your
23 items.

24 THE DEFENDANT: One moment, your Honor.

25 Dr. Penland mentioned Paul Hastings, a law firm named

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1 Paul Hastings that assisted him in -- on a pro bono basis in
2 handling this particular situation. The evidence, your Honor,
3 based upon the 3500 material, the evidence looked at in the
4 light most favorable to the government shows that Paul Hastings
5 was aware that Dr. Penland was involved in criminal activity
6 and convicted of that criminal activity and it was intrinsic to
7 this --

8 THE COURT: That's not relevant to this matter today,
9 sir.

10 THE DEFENDANT: Your Honor, I think it goes to the
11 credibility of the victim.

12 THE COURT: That has been judged by the jury, sir.
13 That's not an issue today.

14 THE DEFENDANT: Your Honor, excuse me, your Honor, the
15 victim has elected to speak today at sentencing to an extent
16 that directly contradicts his testimony at trial.

17 THE COURT: Okay. I have in mind the trial testimony,
18 sir. Go ahead.

19 THE DEFENDANT: That will be it for now, your Honor.

20 THE COURT: Thank you.

21 Counsel, as I've mentioned, I have calculated the
22 guidelines and have taken them into account. Mr. Bell asked me
23 to repeat what the guidelines findings were. I find that the
24 total offense level set forth in paragraph 69 should be 29.
25 That's because paragraph 65 should be plus two. Paragraph 67

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1 should be 29. And paragraph 69 should reflect a total offense
2 level of 29.

3 With a criminal history category of I, that makes the
4 guidelines range on Count One 87 to 108 months. And the
5 guideline range on Count Two remains a mandatory and
6 consecutive 24 months.

7 Is that enough, Mr. Bell?

8 MR. BELL: Yes, your Honor. Thank you.

9 THE COURT: With respect to the defendant's history
10 and characteristics, of course we know that Mr. Cosme is in
11 criminal history category I, as Mr. DeMarco has pointed out,
12 the lowest criminal history category. I take that into account
13 and I take into account his kindness and supportiveness of his
14 family as set forth in Mr. DeMarco's submission and the letters
15 attached to it. I also, however, take into account Mr. Cosme's
16 lack of remorse for the offense conduct.

17 With respect to the paragraph 2 factors, there is
18 certainly a need for a serious sentence here in light of the
19 seriousness of the offense and to provide just punishment.
20 This is particularly so in light of the brazenness of the
21 fraud, the grievous damage that this fraud did on TCIS, both
22 financial damage and psychological damage to the school
23 community and everyone associated with the school community.

24 It is also required here because the proceeds were
25 used for Mr. Cosme's personal enjoyment. He bought not one,

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1 but several luxury automobiles. He departed almost immediately
2 for Las Vegas and spent hundreds of thousands of dollars on
3 hotels, food and drink and gambling. This is a serious crime
4 that deserves a serious punishment.

5 As always, with respect to paragraph B, there is a
6 need for a substantial sentence here in order to deter others
7 from criminal conduct like this and from preying on people like
8 TCIS.

9 With respect to paragraph C, as pointed out by the
10 government, there is a need here in light of Mr. Cosme's lack
11 of remorse to protect the public from further crimes of this
12 defendant.

13 The paragraph D factors are of very little relevance
14 here. I have in mind the paragraph 3, four, and five factors.

15 With respect to paragraph C, the need to avoid
16 unwarranted sentencing disparities, I certainly take into
17 account what Mr. DeMarco has said about the Caspersen case.
18 However, I will note that there are differences between that
19 case and this case. The victim here was an unsophisticated
20 investor, a not for profit, a particularly vulnerable victim.
21 And there was no justification for the offense conduct other
22 than pure simple personal greed.

23 Finally, with respect to paragraph 7, I take into
24 account the need to provide restitution, and I have in mind
25 what Dr. Penland said about restitution sooner rather than

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1 later. However, I am dubious that Mr. Cosme will do anything
2 substantive to provide restitution despite his words here
3 today. I hope he makes a liar out of me, but that is my view.

4 Taking all of those factors into account, counsel, it
5 is my intention to impose a sentence of 87 months on Count One,
6 followed by the period of 24 months consecutive on Count Two,
7 for a total of 111 months.

8 It is my intention to impose a period of three years
9 of supervised release on Count One and one year on Count Two to
10 run concurrently for a total period of three years.

11 It's my intention to impose the recommended special
12 conditions, that is, the search condition, providing access to
13 requested financial information, not opening new credit
14 charges, etc., unless in compliance with the installment
15 payment schedule, and paying 15 percent of Mr. Cosme's gross
16 monthly income towards restitution.

17 It is not my intention to impose a fine on the finding
18 that with the other financial penalties, Mr. Cosme can't afford
19 a fine.

20 It is my intention to impose restitution in the amount
21 of \$5,500,000, as set out in the order of restitution.

22 With respect to forfeiture, I note the preliminary
23 order of forfeiture as to specific properties/money judgment
24 document No. 343, signed by the Court March 30, 2017, to the
25 extent it is required, it's the Court's intention to make that

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1 a final order.

2 MR. BELL: Your Honor, we learned relatively recently
3 that the publication period referenced in the preliminary order
4 of forfeiture has not yet elapsed. It will elapse within the
5 next approximately three weeks, at the conclusion of which we
6 will provide the Court with a final order of forfeiture for
7 your signature again referencing those assets listed --

8 THE COURT: The same assets.

9 MR. BELL: -- which include, of course, the cars and
10 the contents of the accounts.

11 THE COURT: And the cash in the duffel bag.

12 MR. BELL: The cash in the duffel bag, I think, your
13 Honor, has long been spent as a result of the stipulations
14 earlier in this case and went somewhere, I think, between
15 Mr. Cosme's fourth and ninth attorneys.

16 May I also address one small matter with respect to
17 this that Dr. Penland had raised?

18 THE COURT: Yes, sir.

19 MR. BELL: So, as your Honor is aware, forfeiture and
20 restitution have different purposes. The purpose of
21 restitution is for the defendant to make the victim whole. The
22 purpose of forfeiture is to separate the defendant from his ill
23 gotten gains and that money as a general matter goes to the
24 United States government in the general forfeiture fund. There
25 is a process that the Department of Justice can and frequently

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1 does activate which would allow the proceeds of that
2 forfeiture, the forfeiture being sort of automatic and complete
3 upon order, that would apply those to restitution. And it is
4 our office's intention to request that main justice, which
5 makes those determinations, make that determination here.

6 The problem that Dr. Penland referenced earlier is
7 that they are loathe to do so prior to appeals being exhausted,
8 if only because they face the unpleasant possibility of an
9 appeal being released and the money already being out there.
10 As Dr. Penland referenced, the school here has undergone a
11 particular amount of suffering. And we are sympathetic to
12 where the victims are here, just as we are mindful of why main
13 justice has its policy.

14 It's our intention working with Dr. Penland and the
15 school's counsel, Mr. Novack, who I think is here, to try to
16 help them negotiate this process with main justice. If it's
17 possible for those funds to be returned to the school at a
18 sooner point, which is to say to have that process activated
19 and approved sooner, we'd love to see it happen and we will
20 help the school as best as we can.

21 THE COURT: And it's certainly the Court's
22 recommendation that main justice acquiesce in that request.

23 MR. BELL: Understood, your Honor, and we'll convey
24 that.

25 THE DEFENDANT: Your Honor, one other thing. Excuse

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1 me, your Honor.

2 THE COURT: Sir.

3 THE DEFENDANT: I do not consent to the forfeiture and
4 as you know and I just wanted to make a point of clarification
5 on the record that I do not consent to the final forfeiture
6 order that exists. Are you aware that there's a PFO that had
7 language in it that referenced it being a or defined it or
8 deemed it as a final forfeiture order? That being said, it
9 would be a premature federal forfeiture order not in compliance
10 with Rule 322 or the applicable asset forfeiture statutes. So
11 I'm not sure where Martin Bell is going with this final
12 forfeiture discussion. But from my understanding, you are
13 ordering restitution and there's discussions about forfeitures
14 and money judgments and as I stated earlier, the statutes that
15 the government elected to utilize to enforce this forfeiture
16 are inapplicable, not compliant, and inaccurate.

17 So is your understanding that they are or not?

18 THE COURT: We've discussed this many times, sir.
19 I've noted your objection.

20 THE DEFENDANT: What I'm looking for, your Honor, with
21 respect, is your opinion or just your opinion on if it's
22 compliant.

23 THE COURT: We've done this many times. Obviously, I
24 have found it to be compliant. Otherwise, I wouldn't be doing
25 this.

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1 THE DEFENDANT: Okay.

2 THE COURT: To correct the record, I mistakenly said
3 that the preliminary forfeiture order was docket No. 343. It
4 is in fact 345.

5 And finally, counsel, it's my intention to impose the
6 mandatory \$200 special assessment.

7 Is there any reason, counsel, why such a sentence
8 should not be imposed?

9 MR. SOLOWIEJCZYK: No, your Honor.

10 MR. DEMARCO: No, your Honor.

11 THE COURT: Thank you.

12 Mr. Cosme, you're sentenced, sir, to a period of 87
13 months on Count One, to be followed by a consecutive period of
14 24 months, for a total period of incarceration of 111 months.

15 Following that time you'll spend a period of three
16 years on supervised release, that is, three years on Count One
17 and one year on Count Two to run concurrently.

18 During the period of supervised release, you'll comply
19 with all of the standard terms and conditions of supervised
20 release. Among them are that you not commit another federal,
21 state, or local crime; you not illegally possess a controlled
22 substance; and you not possess a firearm or other destructive
23 device.

24 In addition to those and all of the other standard
25 terms and conditions of supervised release, during that period

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1 you'll submit your person, residence, place of business,
2 vehicle, and any other computers as defined in 18 U.S.C.
3 Section 1030(e)(1), electronic communications, data storage
4 devices, and/or other media under your control to a search on
5 the basis that the probation officer has a reasonable belief
6 that contraband or evidence of a violation of the terms and
7 conditions of your release can be found there. The search must
8 be conducted at a reasonable time and in a reasonable manner.
9 Failure to submit to such a search might be grounds for
10 revoking your supervised release. It will be your obligation
11 to inform other residents of the premises or users of the
12 electronic devices that they might be subject to a search under
13 this condition.

14 In addition, sir, during that period you'll provide
15 the probation officer with access to any requested financial
16 information. In addition, during that period you will not
17 incur any new credit charges or open any additional lines of
18 credit without the approval of the probation officer unless you
19 are in compliance with the installment payment schedule.

20 As I'll mention again a moment, during the period of
21 supervised release, you will pay 15 percent of your gross
22 monthly income towards satisfaction of the restitution amount.

23 As I mentioned, I do not impose a fine, but do impose
24 the restitution amount of \$5,500,000.

25 The Court finds that the Taejeon Christian

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1 International School has suffered monetary losses compensable
2 under the Victim and Witness Protection Act in the amount of
3 \$5,500,000. Restitution payments are to be addressed to the
4 clerk of the court and sent to 500 Pearl Street, New York, New
5 York 10007. From time to time the clerk of the court will
6 forward restitution payments to the Taejeon Christian
7 International School, 77 Yongsan 2-Ro, Yuseong, Gu, Daijeon
8 34035, Republic of Korea.

9 Sir, if you are engaged in BOP non-UNICOR work, you'll
10 pay \$25 per quarter toward the criminal financial penalties.
11 If you participate in the BOP's UNICOR program at a grade one
12 through four, you'll pay 50 percent of your monthly UNICOR
13 earnings toward the criminal financial penalties consistent
14 with BOP regulations at 28 C.F.R. Section 545.11.

15 Following your release, sir, you'll pay 15 percent of
16 your gross monthly income towards satisfaction of the
17 restitution amounts. Payments shall begin no later than 30
18 days after entry of judgment in this matter, and payments shall
19 be made monthly to the clerk of court as I've noted.

20 As I've also noted, it is my intention to execute a
21 final order of forfeiture after the notice period which mirrors
22 the preliminary order of forfeiture as to specific
23 properties/money judgment, document No. 343.

24 And finally, sir, I must impose and do impose the
25 mandatory \$200 special assessment and that should be paid

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1 promptly.

2 It is my duty to inform you, sir, that unless you have
3 waived it, you have the right to appeal this sentence and you
4 might have the right to appeal *in forma pauperis*, which means
5 as a poor person, with the waiver of certain fees and expenses.

6 Mr. DeMarco, Mr. Cosme, did you wish a designation to
7 an area of the country?

8 MR. DEMARCO: Northeast region, your Honor, to
9 facilitate family visits, please.

10 THE COURT: It is the Court's recommendation that
11 Mr. Cosme be designated to a facility in the northeast region
12 to allow his family and friends to visit him.

13 Anything further, counsel?

14 MR. SOLOWIEJCZYK: Your Honor, the government moves to
15 dismiss the underlying indictment and any other open counts.

16 THE COURT: So ordered.

17 Anything else?

18 MR. DEMARCO: No, thank you, your Honor.

19 THE DEFENDANT: Your Honor, just one more thing, just
20 point of clarification again. The defense does contest the
21 forfeitures and the restitution.

22 THE COURT: Yes, sir. I noted that in your
23 objections.

24 THE DEFENDANT: And we move to apply for a forfeiture
25 hearing.

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1 THE COURT: Too late.

2 THE DEFENDANT: We mentioned it earlier, your Honor,
3 timely.

4 THE COURT: In my preliminary statements, I noted that
5 to the extent you had requested any hearings, they were denied.

6 THE DEFENDANT: Thank you, your Honor.

7 MR. BELL: One housekeeping matter, your Honor. You
8 made reference earlier to a number of correspondences, I think,
9 that you had received from Mr. Cosme. Some of these we've
10 received, some of these we haven't.

11 THE COURT: If you'll just wait there, I'm happy to
12 give them to you for your inspection.

13 MR. BELL: I don't particularly want them, your Honor.
14 I'm just asking for completeness of the record that those be
15 docketed --

16 THE COURT: Yes, sir.

17 MR. BELL: -- in the inevitable appeal.

18 THE COURT: Yes, sir. Anything else?

19 MR. SOLOWIEJCZYK: No, your Honor.

20 THE COURT: Thank you.

21 Mr. DeMarco, thank you. You have conducted yourself
22 with the utmost professionalism throughout this matter.

23 MR. DEMARCO: Thank you, your Honor.

24 THE COURT: Thank you, Mr. Marshal.

25 Good afternoon, Mr. Cosme.

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1 THE DEFENDANT: Thank you, your Honor.

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